

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-242
)	
Tralyn Broadcasting, Inc.)	NAL/Acct.No. 200332620001
Licensee of Radio Station WIGG(AM) in)	
Wiggins, Mississippi)	FRN 0005-0066-71
Muscle Shoals, Alabama)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 1, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Tralyn Broadcasting, Inc. (“Tralyn”), licensee of AM radio station WIGG, Wiggins, Mississippi, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for repeated and willful violation of Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Commission’s Rules (“Rules”).¹ Specifically, we find Tralyn apparently liable for failing to conduct weekly tests of the Emergency Alert System (“EAS”), and failing to maintain all required material in the station’s public inspection file.

II. BACKGROUND

2. On August 13, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Field Office inspected station WIGG(AM) in Wiggins, Mississippi. During this inspection, it was determined that the station was not running any weekly EAS tests. There were no log entries reflecting any EAS events. The station employee responsible for programming stated that the station had not run any weekly EAS tests. Additionally, a review of the station’s public inspection file revealed that all of the required materials were not available, specifically the station authorization, “The Public and Broadcasting,” letters from the public, and quarterly issues/programs lists for the years 2001 and 2002.

III. DISCUSSION

3. Section 11.61(a)(2)(i)(A) of the Rules requires that effective January 1, 1997, AM, FM, and TV stations must conduct tests of the EAS header and End of Message codes at least once a week at random days and times. During the station inspection on August 13, 2002, there were no records indicating that the required weekly EAS tests were transmitted. Additionally, a station employee acknowledged that a computer controlled the automated station and that weekly EAS tests were never

¹ 47 C.F.R. §§ 11.61(a)(2)(i)(A), 73.3526(a)(2).

programmed into the computer to be transmitted by the station.

4. Section 73.3526(a)(2) of the Rules states that “[e]very permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section.” Additionally, “every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section.” On August 13, 2002, a review of station WIGG’s public inspection file revealed that much of the required material was missing, including a copy of the station’s authorization, “The Public and Broadcasting” manual, letters from the public, and the issues/programs lists for the years 2001 and 2002.

5. Based on the evidence before us, we find that Tralyn repeatedly² and willfully³ violated Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Rules by failing to conduct weekly EAS tests, and failing to maintain all required material in the station’s public inspection file.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failure to conduct EAS tests is \$2,000 (failure to make required measurements or conduct required monitoring), and the base forfeiture amount for public file rule violations is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁵ In this case, we consider that although seven issue/programs lists were missing, overall, approximately one-half of the station’s public file was available at the time of inspection. Therefore, we assess the forfeiture amount for the public file violation at \$5,000. Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

² The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Tralyn Broadcasting, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for repeated and willful violation of Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Rules by failing to conduct weekly tests of the Emergency Alert System, and failing to maintain all required material in the station's public inspection file.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Tralyn Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Tralyn Broadcasting, Inc., 522 D Mitchell Self Memorial Drive, Muscle Shoals, Alabama 35662.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

Attachment